



**IT IS ORDERED as set forth below:**

**Date: February 16, 2010**

*James E. Massey*

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

\_\_\_\_\_  
IN RE:

CASE NO. 09-82889

Teron Trace, LLC,

CHAPTER 11

Debtor.

JUDGE MASSEY

\_\_\_\_\_  
MAJ Investors I, LLC,

Movant,

v.

CONTESTED MATTER

Teron Trace, LLC,

Respondent.

\_\_\_\_\_  
ORDER DENYING MOTION FOR RECONSIDERATION

Teron Trace, LLC, the Debtor in this Chapter 11 case, moves for reconsideration of the Order entered on January 28, 2010 granting MAJ Investors I, LLC's motion for stay relief, following an evidentiary hearing held on January 15, 2010.

Debtor advances two grounds for reconsideration of the July 28 Order. First, Debtor points out that on January 26, 2010, it filed an affidavit of Lindsey Warren, Debtor's principal, which it contends justifies reconsidering the Order. The affidavit asserts that Debtor holds an assignment of rents that allegedly would create additional cash flow beginning in June 2010, that an affiliated entity would pay rent beginning on the effective date of its plan if that entity moved into the Property located at 2078 Teron Trace, Dacula, Georgia (the "Property"), that Mr. Warren would, if necessary, take cash out of a personal IRA to collateralize a guarantee of lease payments by Gibraltar Executive Suites, LLC ("GES") to Debtor, and that he is willing to provide other personal collateral to secure a guarantee of plan payments to GES, in addition to paying 2009 ad valorem taxes. Second, Debtor argues that the Court misunderstood Ms. Cauthen's testimony.

Motions for reconsideration of an order are governed by Fed. R. Civ. P. 59(e), made applicable in adversary proceedings by Fed. R. Bankr. P. 9023. *See* Fed. R. Bankr. P. 9002 ("Judgment" as used in Fed. R. Civ. P. 59 "includes any order appealable to an appellate court."); *Condor One v. Homestead Partners (In re Homestead Partners)*, 201 B.R. 1014, 1017-18 (Bankr. N.D. Ga. 1996). "[T]he goal of this provision is limited to the correction of any manifest errors of law or misapprehension of fact." *Condor One*, 201 B.R. at 1017. Accordingly, courts are generally reluctant to grant a motion for reconsideration unless one of the following is present: "(1) an intervening change in controlling law; (2) the availability of new evidence; [or] (3) the need to correct clear error or manifest injustice." *Wendy's Int'l, Inc. v. Nu-Cape Constr., Inc.*, 169 F.R.D. 680, 685 (M.D. Fla. 1996).

Debtor has failed to show any of the factors necessary to warrant reconsideration is present here. The evidence in Mr. Warren's affidavit is not new evidence and could have been presented at the evidentiary hearing on the motion. Debtor does not contend that there is any intervening change in applicable law or manifest error of law.

The last factor supporting a motion for reconsideration is misapprehension of fact by a court. Debtor contends that the Court misapprehended the testimony of Ms. Cauthen, its expert witness.

The Court summarized Ms. Cauthen's testimony on page 5 of the January 28 Order. She testified that free rent was a factor in attracting renters of suites in a normal economy and that the present economy was not normal; she did not testify that GES's suites business would offer free rent. Debtor is contending that GES can find clients without offering free rent. Debtor's expert witness testified, however, that in her consulting business, she was seeing "rates as low as I have negotiated." It is a fair inference from Ms. Cauthen's testimony that GES would have difficulty paying rent to Debtor during the next fifteen months based on the current number of unrented suites and the apparent demand of the market for some period of free rent even in a "normal" economy. Ms. Cauthen's testimony called attention to the problems of the market for suites generally. The issue before the Court was not the general market but rather the market in which GEC operates and competes. On this critical issue, Debtor put up virtually no evidence to support GES's projections in Debtor's Exhibit 15. Ms. Cauthen, the expert Debtor hired more than a year ago, was never asked when she thought GES would be profitable enough to pay the contract rent to Debtor. There was no testimony about the demand for suites, the going rates, the

level of competition, the rates of turnover or the financial strength of renters of suites in the vicinity of the Property.

Ms. Cauthen testified that she would not be surprised if it took a suites business eighteen months to become profitable. Debtor began leasing suites in April 2008. As the date of the evidentiary hearing (January 15, 2010), some 21 months later, neither GES nor Debtor are anywhere near profitability. Debtor states in the motion that her testimony was to explain why Debtor had agreed to free rent for GES. Her testimony was about free rent to suites tenants, however, not about free rent to an entity in the business of renting suites.

The Court does not believe it misunderstood Ms. Cauthen's testimony or that it placed too much emphasis on her discussion of marketing the suites business generally. The findings in the January 28 Order were based on the lack of credible evidence to support GES's projections.

For these reasons, the motion for reconsideration is DENIED.

\*\*\*END OF ORDER\*\*\*